

By: Mr. Golombek

Re: Ordinance Amendment

Chapter 288, Natural Gas Extraction Prohibition

The Common Council of the City of Buffalo does hereby ordain as follows:

That Chapter 288 of the Code of the City of Buffalo be added to read as follows:

Chapter 288, NATURAL GAS EXTRACTION PROHIBITION

Whereas, this ordinance prohibits the exploration for and extraction of natural gas and the storage, transfer, treatment or disposal of natural gas exploration and production wastes within the City of Buffalo, in order to preserve and protect the public health, safety and welfare of the residents and neighborhoods of Buffalo; and

Whereas, after review of scientific research from both opponents of natural gas extraction and natural gas extraction industry advocates, the Common Council now seeks to prevent the citizens of Buffalo from the dangers associated with natural gas extraction; and

Whereas, this Ordinance shall be known and may be cited as "Buffalo's Community Protection from Natural Gas Extraction Ordinance";

Now Therefore, Be it enacted by the Common Council of the City of Buffalo as follows:

§288-1 Findings and Intent

The Common Council of the City of Buffalo finds, declares and determines that:

(a.) the exploration for natural gas, the extraction of natural gas and the storage, transfer, treatment or disposal of natural gas exploration and production wastes in the urban environment of Buffalo poses a significant threat to its residents' health, safety, and welfare;

(b.) widespread environmental and human health impacts have resulted from natural gas exploration and extraction in other areas;

(c.) if natural gas exploration or extraction or the storage, transfer, treatment or disposal of natural gas exploration and production wastes were to occur within the City, this activity would endanger the health, safety and welfare of City residents through the deposit of toxins into the air, soil, water, environment, and the bodies of residents within the City;

(d.) the protection of residents, neighborhoods, and the natural environment constitutes the highest and best use of the police and land use powers that the City possesses;

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(e.) clean air and water are essential to most resources and activities in the Buffalo area and the quality of the air and the water will be degraded by natural gas exploration and extraction activities and/or the storage, transfer treatment or disposal of natural gas exploration and production wastes;

(f.) natural gas exploration and extraction activities and the storage, transfer, treatment or disposal of natural gas exploration and production wastes may presently or in the future cause irreparable harm to the City's water supply, pollution of the water, soil and air, and may cause cancer, lung disease, and respiratory diseases;

(g.) air, soil, and water contamination may occur during the different stages of natural gas exploration and extraction operations and the storage, transfer, treatment or disposal of natural gas exploration and production wastes, and such contamination could have adverse human health impacts;

(h.) spills of liquid and solid wastes that originate from the exploration, drilling and extraction of natural gas (whether onsite or during the transportation of these products to treatment and/or disposal facilities) is not uncommon, and such products may come into contact with and contaminate and pollute groundwater and/or soil;

(i.) a large percentage of the chemicals used in natural gas exploration and extraction and many of the constituents of natural gas exploration and production wastes are likely causes of adverse human health impacts;

(j.) natural gas exploration and production waste products are hazardous wastes within the meaning of Section 235-1 of the Buffalo City Code;

(k.) the City of Buffalo has the authority to prohibit the exploration and extraction of natural gas and the storage, transfer or disposal of natural gas exploration and production wastes within its borders;

(l.) this Ordinance addresses land use and nuisance issues and is intended to only incidentally impact the state law set forth in New York State Environmental Conservation Law Article 23;

(m.) this Ordinance endorses the Buffalo Comprehensive Plan. The Comprehensive Plan notes that "The Great Lakes contain 20 percent of the world's fresh water supply. This is a resource of immense and increasing global value. The Comprehensive Plan also notes a need to reduce the total area zoned for heavy industrial use and the need to promote sustainable "green" development. The City of Buffalo chooses not to permit additional sites for extraction of fossil fuels within its city limits, but rather seeks to preserve areas that might otherwise be dedicated to fossil fuel extraction for other more sustainable alternatives.

(n.) The Common Council believes that the protection of residents, neighborhoods, and the natural environment is an appropriate use of its police powers. The Common Council thus hereby adopts this ordinance, which bans the extraction of natural gas within the City of Buffalo because that extraction cannot be achieved without endangering the health, safety, and welfare of the residents of the City of Buffalo.

§288-2 Legislative Objectives and Authority

A. This Ordinance is enacted to protect and promote the health, safety and general welfare of present and future residents of the City. This Ordinance is an exercise of the City's police power, its power to prohibit public nuisance and a land use regulation designed to protect the health, safety and welfare of the of the current and future residents of the City from adverse effects and impacts that would result if natural gas exploration and extraction and/or the storage, transfer, treatment or disposal of natural gas exploration and production wastes were allowed within the City.

B. This Ordinance is promulgated pursuant to the Authority set forth in Article 9, §§1 and of the of the New York State Constitution and §10 of the New York State Municipal Home Rule Law.

C. This ordinance supports the policies of the State of New York (1) "to conserve, improve and protect its natural resources and environment and to prevent, abate, and control water, land and air pollution in order to enhance the health, safety and welfare of the people of the State and their overall economic and social well-being (ECL1-0101); and (2) "to reduce or eliminate the use of hazardous substances and the generate of such substances, pollution or waste at the source in order to conserve, improve and protect New York's environment and natural resources; enhance the health, safety and welfare of tis citizens..."

D. This Ordinance is an exercise of the City of Buffalo's prohibition on any activity "involving the treatment, storage or disposal of hazardous wastes which cause substantial harm or a risk of substantial harm to the public health and safety or to the environment ..." (Buffalo City Code §235-2).

E. This Ordinance is not directed at the regulatory scheme for the operation of natural gas wells under the Oil, Gas & Solution Mining Law of New York State. This Ordinance addresses land use and nuisance concerns and the protection of the health, safety and welfare of the people of the City of Buffalo and the enhancement of its physical environment.

§288-3 Definitions

A. "Corporations," for purposes of this ordinance, shall include any corporation, limited partnership, limited liability partnership, business trust, or limited liability company organized under the laws of any state of the United States or under the laws of any country, and any other business entity that possesses State-conferred limited liability status or protections for its owners, directors, officers, and/or managers.

B. "Exploration" shall mean geologic or geophysical activities related to the search for natural gas or other subsurface hydrocarbons including prospecting, geophysical and geologic seismic surveying and sampling techniques, which include but are not limited to core or rotary drilling or making an excavation in the search and evaluation of natural gas deposits.

C. "Extraction" shall mean the digging or drilling of a well for the purposes of exploring for, developing or producing natural gas or other hydrocarbons.

D. "Natural Gas" shall mean any gaseous substance, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarified state at standard temperature or pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons.

E. "Natural Gas Exploration and Production Wastes" shall mean any garbage, refuse, sludge, or other discarded materials, including solid, liquid, semisolid, or contained gaseous material that results from the exploration, drilling or extraction of natural gas.

F. "Pollution" shall mean the contamination or other degradation of the physical, chemical or biological properties of land, water or air that will or is likely to, create a nuisance or render such land, water or air harmful, detrimental or injurious to the public health, safety or welfare, or harmful, detrimental or injurious to domestic, commercial, industrial, agricultural, recreational or other beneficial uses, or to wildlife, birds, fish, or other aquatic life.

§288-4 Prohibition Against the Exploration for or Extraction of Natural Gas

No person, firm or corporation shall: conduct any exploration for natural gas; drill any well for natural gas; transfer, store, treat, or dispose of natural gas exploration or production wastes; or erect any derrick, building, or other structure or place any machinery or equipment for such purpose within the territorial boundaries of the City of Buffalo.

§288-5 Prohibition Against the Storage, Treatment and Disposal of Natural Gas Extraction Wastes

The storage, transfer, treatment and/or disposal of natural gas exploration and production wastes are hazardous wastes within the meaning of this Code. No person, firm or corporation shall engage in the storage, transfer, treatment and/or disposal of natural gas exploration and production wastes within territorial boundaries of the City of Buffalo. No permit issued by any state or federal agency, commission or board to any person, firm or corporation, which would violate the prohibitions of this Ordinance shall be deemed valid within the City of Buffalo.

§288-6 Enforcement

A. Any person, corporation, or other entity that violates any prohibition of this Ordinance shall be guilty of a summary offense and, upon conviction thereof, shall be subject to the maximum fine allowable under this Charter and Code for said violation. A separate offense shall arise for each day or portion thereof in which a violation occurs and for each section of this Ordinance found to be violated.

B. The City of Buffalo may also enforce this Ordinance through an action in equity brought in New York State Supreme Court. In such an action, the City of Buffalo shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

C. Any City resident shall have the authority to enforce the provisions of this Chapter through an action brought in New York State Supreme Court. In such an action, a resident who enjoins a violator of this Chapter from a continuing violation of this Chapter shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees from the violator.

§288-7 Effective Date and DEC Permit Holders

This Ordinance shall be effective five (5) days after the date of its enactment, at which point the Ordinance shall apply to any and all extractions of natural gas in the City of Buffalo regardless of the date of any applicable DEC permits.

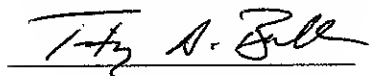
§288-8 Severability

The provisions of this Ordinance are severable. If any court of competent jurisdiction decides that any section, clause, sentence, part, or provision of this Ordinance is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts, or provisions of the Ordinance.

§288-9 Repealer

This Ordinance shall repeal any prior inconsistent ordinances contained in the Buffalo City Code purporting to regulate or allow natural gas extraction or the transport, storage, treatment or disposal of natural gas exploration or extraction waste.

APPROVED AS TO FORM



Asst. Corporation Counsel

NOTE: Matter underlined is new,
matter in brackets is to be deleted.